

**Remarks/Arguments**

In an Office Action dated July 25, 2007, claims 41, 42 and 53 were rejected under § 102 as anticipated by Jacobs (U.S. Pat. App. 2006/012366); claims 1, 2, 12, 18, 22, 23 and 37 were rejected under § 103 as being unpatentable over Jacobs in view of Soloway (U.S. Pat. No. 6,819,654); claims 3-6, 24-27 and 43-46 were rejected under § 103 as being unpatentable over Jacobs in view of Soloway and further in view of Banks (U.S. Pat. App. 2005/0018619); claims 16, 17, 36, 57 and 58 were rejected under § 103 as being unpatentable over Jacobs in view of Soloway and further in view of Ofek (U.S. Pat. No. 5,901,327); and claims 7-11, 13-15, 19-21, 28-35, 38-40, 47-52, 54-56 and 59-61 were allowable. Applicants request reconsideration in view of the remarks below.

**Amendments**

Claims 1, 2, 19 and 21 have been amended to clarify that the recited operations are being performed on a single device, not potentially on multiple, different devices.

**Section 102 Rejections**

**Claim 41**

Claim 41 was rejected under § 102 over Jacobs. Applicants respectfully traverse the rejection.

Claim 41 requires a second switch to receive a first message from a first switch, detect the loss of the first switch and then resend the first message in certain cases. Thus the claim requires the second switch to resend the first message that originally was from the first switch.

The Office Action has corresponded the update server to the first switch and a network server to the second switch. The error in the rejection arises when the Office Action corresponds the updating server as resending the first message (“resend the update from the updating server to a second network server”). As noted above, the claim requires the second switch to perform this resending operation but the Office Action has

the first switch resending the first message. Therefore Applicants submit that the Office Action has not properly corresponded the various items in Jacobs to the claim. To form a proper rejection in this regard the resending operation must be shown as being done by the network server that received the update from the updating server. Jacobs does not teach or suggest this operation. Withdrawal of the rejection is requested.

### **Section 103 Rejections**

Claims 1, 2, 12, 18, 22, 23 and 37 were rejected under § 103 over Jacobs in view of Soloway. Applicants respectfully traverse the rejection

#### **Claim 1**

Similar to the second switch of claim 41, claim 1 as now clarified requires the steps to be performed on a first device. Thus the first device is required to receive the first message, detect the loss and resend the first message under certain conditions. As with the rejection of claim 41, the Office Action has corresponded a network server of Jacobs as the device performing the receiving and detecting but then corresponded the updating server, the item corresponded to the commit master, to perform the resending. As the claim now clearly requires all three operations to be performed by the first device, the rejection is improper and should be withdrawn.

#### **Claim 18**

Claim 18 specifies certain operations be performed as part of the resending step of claim 1. As with claim 1, the Office Action has the updating server, the commit master equivalent, performing both operations while claim 1 requires the network server, the first device equivalent, to perform the operations. Withdrawal of the rejection is requested.

#### **Claim 22**

Claim 22 defines the elements of a single Fibre Channel switch and thus is similar to the second switch of claim 41. The Office Action has corresponded the server 106 of

Jacobs as being the Fibre Channel switch which performs the receiving and detecting operations but then has a different device, the updating server, perform the resending operation specified in the claim as being done by the same control unit of the Fibre Channel switch that performs the receiving and detecting. This mixing and matching of elements of Jacobs is improper and withdrawal of the rejection is requested.

**Claim 37**

Claim 37 is similar to claim 18 and was rejected similarly, so the same arguments apply. Withdrawal of the rejection is requested.

**Claims 3-6, 24-27 and 43-46**

The Office Action rejected claims 3-6, 24-27 and 43-46 under § 103 over Jacobs in view of Soloway and Banks. Applicants respectfully submit that Banks is not a proper reference to be used in forming a § 103(a) rejection under the terms of § 103(c)(1).

Section 103(c)(1) states:

(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Applicants state that such is the case here and provide the following statement to remove the Banks reference.

**Statement under § 103(c)(1)**

The instant application, Serial No. 10/056,823, and U.S. Patent Application Serial No. 10/853,321, which is Pub. No. US 2005/0018619, were, at the time the invention of application Serial No. 10/056,823 was made, owned by or subject to an obligation of assignment to Brocade Communications Systems, Inc.

Further evidence of this common ownership is evidenced by the assignment records of the two applications, the present case at Reel/Frame 012851/395 and Serial

No. 10/853,321 at Reel/Frame 010578/0657 and 010818/0758, the assignment records for its parent case Serial No. 09/426,567, now Patent No. 6,765,919, which indicate ownership in both cases by Brocade Communications Systems, Inc.

**Claims 16, 17, 36, 57 and 58**

The Office Action rejected claims 16-17, 36 and 57-58 under § 103 over Jacobs in view of Soloway and Ofek. Applicants respectfully traverse the rejections.

Each of the rejected claims requires detecting that a second message has not been received from the commit master within a specified time. Ofek was cited as supplying this teaching admitted as missing from Jacobs and Soloway. However, the cited portions of Ofek only indicate a failure is determined if an acknowledgement to a previously sent message is not received timely. The claims require timing from the first message to the second message from the commit master. Ofek is timing the period from when the device itself has sent a message while the claims require timing the period between two messages from a remote source. These two are not equivalent, so that the rejection based on Ofek is improper.

**Conclusion**

Based on the above remarks Applicants respectfully submit that all of the present claims are allowable. Reconsideration is respectfully requested.

Respectfully submitted,

May 2, 2008

Filed Electronically

/Keith Lutsch/  
Keith Lutsch, Reg. No. 31,851  
Wong, Cabello, Lutsch,  
Rutherford & Bruculeri, L.L.P.  
20333 SH 249, Suite 600  
Houston, TX 77070  
832-446-2405